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EXAMINER

SEREBOFF, NEAL

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/625,049	Applicant(s) LAWRENCE, DAVID	
	Examiner NEAL R. SEREBOFF	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/7/2004, 8/16/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. Claims 1 – 34 are pending
2. The Information Disclosure Statements (PTO-1449) submitted on 5/7/2004 and 8/16/2004 have been considered.

Claim Objections

3. Claim 1, 14, 17, 27 and 34 are objected to because of the following informalities:
 - Claim 1 includes the limitation “a admittance” that should be “an admittance.”
 - Claims 14 and 17 include the pre-amble of "The method of claim I" instead of the “The method of claim 1.”
 - Claim 27 includes the limitation “wherein at least one or” that should be “wherein at least one of.”
 - Claim 34 includes the numerical “30” without any corresponding reference.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1 – 32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1 – 32 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, a § 101 process must (1) be tied to a machine (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or

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materials) to a different state or thing. In re Bilski, F.3d , 88 U.S.P.Q.2d 1385 (2008).

Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9

(1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S.

780,787-88 (1876). The process steps in claims (1 – 32) are not tied to a machine nor do they execute a transformation. Thus, they are non-statutory.

The use of a computer in claim 1 is considered insignificant extra-solution activity.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 17 requires a user to not do something in the future. The indefinite obligation is therefore boundless. The Examiner understands that the process user must act according to current regulations.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. ***Claim 1 – 16, 18 – 27, 30 and 32 – 34*** are rejected under 35 U.S.C. 102(e) as

being anticipated by Fogel et al., U.S. Patent Number 6,542,905.

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10. As per claim 1, Fogel teaches a computer-implemented method for managing risk related to a long term care, the method comprising:

- Indicating in a computer system that an entity is a long term care entity according to the entity's status as at least one of: a long term care provider or a long term care facility operator (figure 1, nursing facility);
- Gathering data into the computer system generally related to one or more long term care entities (figure 1, #28 or #36);
- Receiving data into the computer system descriptive of details of a long term care transaction wherein the data received comprises identification data for at least one long term care entity (column 17, lines 14 – 19, admission information);
- Structuring the gathered data and the data relating details of the long term care transaction according to risk quotient criteria (column 5, lines 31 – 39 where the database provides structure);
- Calculating a risk quotient by referencing the structured data (column 4, lines 18 – 31) ; and
- Generating a report comprising the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 4, lines 18 – 31 where a report is generated).

11. As per claim 2, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the long term care transaction comprises a financial investment in at least one of: a long term care facility and a long term care provider (column 16, lines 33 – 50, payment by insurance company).

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12. As per claim 3, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the long term care transaction comprises a admittance to a long term care facility (column 9, lines 7 – 26).

13. As per claim 4, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication of a cost to defend an adverse position (column 14, lines 5 – 39 where “cost to defend” is not defined with Pre-Grant Publication paragraph 24 and therefore is considered to be the financial impact of the current program. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

14. As per claim 5, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication an amount of reputational risk (“reputational risk” as explained with Pre-Grant Publication paragraph 24 is considered to be the "harm that a Risk Bearing Institution or Transaction Participant may suffer regarding its professional standing in an industry or the public eye." Column 14, lines 5 – 39 where the amount of harm is considered to be the financial impact of the current program. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

15. As per claim 6, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication of an amount of regulatory risk (“regulatory risk” is not defined nor quantified by the instant application. Column 4, lines 1 - 17 where the score is useful within regulation. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

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16. As per claim 7, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication of an amount of legal risk ("legal risk" is not defined nor quantified by the instant application. Column 2, lines 27 – 50 where the score is useful for determining legal liability. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

17. As per claim 8, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication of an amount of risk associated with monetary costs related to potential fines ("risk associated with monetary costs related to potential fines" is not defined nor quantified by the instant application. Column 20, lines 40 – 67 where the monetary costs relate to lack of payments and so the fine is the failure to reimburse the institution. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

18. As per claim 9, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the gathered data comprises data descriptive of one or more world events which is received via a news feed (The stored news data represents non-functional descriptive information. Abstract where data is stored)

19. As per claim 10, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the gathered data comprises at least one government advisory (Figure 1, #36 and the gathered data represents non-functional descriptive information).

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20. As per claim 11, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein calculating the risk quotient criteria comprises a value determined by the steps of:

- Associating a numerical weight with each of a plurality of risk variables (figure 1, # 26 and # 34);
- Associating one or more of the risk variables with the data descriptive of details of a long term care transaction (figure 1, #28 and #36);
- Determining a numerical value based upon the content of the data descriptive of details of a long term care transaction associated with the one or more risk variables (figure 1, #26); and
- Multiplying the numerical value based upon the content times the numerical weight associated with each of the risk variables associated with the data descriptive of details of a long term care transaction (figure 1, #24, grade).

21. As per claim 12, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprising the steps of presenting the report as evidence of due diligence to at least one of: a regulatory body, a shareholder and a news media (column 21, lines 41 – 46).

22. As per claim 13, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprising the step of generating a suggested action based upon the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 26, lines 48 – 67 where the report suggests fixes).

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23. As per claim 14, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the data gathered comprises data relating to a personnel employed by a long term care provider (column 21, lines 11 – 36).

24. As per claim 15, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the data gathered comprises data relating to patient welfare (column 4, lines 1 – 17).

25. As per claim 16, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprising the steps of:

- Associating one or more statutes or regulations with the long term care transaction (column 16, lines 51 through column 17, line 3, Medicare regulations); and
- Transmitting a description of the associated statute with the data (This step is not performed as the preceding step was for a regulation. Therefore, this step has no patentable weight. Additionally, if the current step were limiting, although not, the statute description would be considered non-functional descriptive information).

26. As per claim 18, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the report comprises a record of conviction of an employee or owner of a long term care facility (column 4, lines 18 – 32 where a report is provided and the information within the report is considered non-functional descriptive information and therefore has no patentable weight).

27. As per claim 19, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the report comprises data descriptive of fines levied against a long term care facility or complaints filed against the facility (column 4, lines

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18 – 32 where a report is provided and the information within the report is considered non-functional descriptive information and therefore has no patentable weight).

28. As per claim 20, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the report comprises one or more sources of the gathered data (column 4, lines 18 – 32).

29. As per claim 21, Fogel teaches the method of claim 20 as described above. Fogel further teaches the method wherein the source comprises an investigation firm (column 4, lines 18 – 32 where a report is provided and the information within the report is considered non-functional descriptive information and therefore has no patentable weight. The source of data is non-functional when changing the data source does not effect the result).

30. As per claim 22, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprising the step of transmitting an image of a document comprising data associated with the long term care transaction (column 2, lines 40 – 50 where documents may be scanned).

31. As per claim 23, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein report does not comprise any content created or developed by a provider of the system implementing the method for managing risk associated with long term care (column 4, lines 18 – 32 where a report is provided and the information within the report is considered non-functional descriptive information and therefore has no patentable weight).

32. As per claim 24, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprises the steps of:

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- Receiving a request for an alert (The Examiner is using the examples provided in paragraph 54 to understand the meaning of “alert.” As such, the Examiner understands that an alert is an automated response based upon a trigger. Column 27, lines 46 – 54, trigger text box);
- Monitoring the gathered data (column 27, lines 7 – 16); and
- Transmitting a notification of new information received associated with the long term care risk subject (column 27, lines 7 – 54).

33. As per claim 25, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the data is gathered into a risk management clearinghouse (“Risk management clearinghouse” is understood, by figure 1 to be a database. The name of the database is considered to be non-functional descriptive information. Abstract).

34. As per claim 26, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the data descriptive of details of a long term care transaction is received by a proprietary risk management system (The Examiner is using the Collins definition of proprietary to understand that this is a system owned by an individual or company. Abstract).

35. As per claim 27, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein at least one or: the gathered data and the data descriptive of details of a long term care transaction; comprise data provided by a long term care recipient (column 3, lines 31 – 40 and column 27, lines 31 – 45, resident assessment data).

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36. As per claim 30, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprising the step of augmenting at least one of: the gathered data and the data descriptive of details of a long term care transaction; via data mining (column 6, lines 50 – 58 where researchers access the data).

37. As per claim 32, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein structuring the gathered data and the data relating details of the long term care transaction according to risk quotient criteria comprises relevance ranking (column 6, lines 39 – 49 where a scale is a rank and column 11, line 66 through column 12, line 3).

38. As per claim 33, Fogel teaches a computerized system for managing risk associated with long term care, the system comprising:

- A computer server accessible with a system access device via a communications network (column 1, lines 8 – 17 and column 3, line 51 through column 4, line 17); and
- Executable software stored on the server and executable on demand (column 3, lines 62 – 67), the software operative with the server to cause the system to:
 - Indicate in a computer system that an entity is a long term care entity according to the entity's status as at least one of: a long term care provider or a long term care facility operator (figure 1, nursing facility);
 - Gather data into the computer system generally related to one or more long term care entities (figure 1, #28 or #36);
 - Receive data into the computer system descriptive of details of a long term care transaction (column 17, lines 14 – 19)

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- Wherein the data received comprises identification data for at least one long term care entity (column 17, lines 14 – 19, admission information);
- Structure the gathered data and the data relating details of the long term care transaction according to risk quotient criteria (column 5, lines 31 – 39 where the database provides structure);
- Calculate a risk quotient by referencing the structured data (column 4, lines 18 – 31) ; and
- Generate a report comprising the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 4, lines 18 – 31 where a report is generated).

39. As per claim 34, Fogel teaches a computer executable program code residing on a computer-readable medium, the program code comprising instructions for causing the computer to:

- Indicate in a computer system that an entity is a long term care entity according to the entity's status as at least one of: a long term care provider or a long term care facility operator (figure 1, nursing facility);
- Gather data into the computer system generally related to one or more long term care entities (figure 1, #28 or #36);
- Receive data into the computer system descriptive of details of a long term care transaction (column 17, lines 14 – 19)
 - Wherein the data received comprises identification data for at least one long term care entity (column 17, lines 14 – 19, admission information);

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- Structure the gathered data and the data relating details of the long term care transaction according to risk quotient criteria (column 5, lines 31 – 39 where the database provides structure);
- Calculate a risk quotient by referencing the structured data (column 4, lines 18 – 31); and
- Generate a report comprising the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 4, lines 18 – 31 where a report is generated).

Claim Rejections - 35 USC § 103

40. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

41. ***Claim 17*** is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al., U.S. Patent Number 6,542,905 in view of Jinnett, U.S. Pre-Grant Publication 2002/0120477.

42. As per claim 17, Fogel, as understood, teaches the method of claim 1 as described above.

Fogel further teaches the method wherein transmitting the report is conditioned upon receipt of a contractual obligation not to use contents of the report for any purpose covered by the regulation (column 4, lines 53 – 67 where regulations are required to be followed).

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Fogel does not explicitly teach the method wherein transmitting the report is conditioned upon receipt of a contractual obligation not to use contents of the report for any purpose covered by the Fair Credit Reporting Act.

However, Jinnett further teaches the method wherein transmitting the report is conditioned upon receipt of a contractual obligation not to use contents of the report for any purpose covered by the Fair Credit Reporting Act (paragraph 86).

It would have been obvious to one of ordinary skill in the art at the time of the invention to add this feature to Fogel. One of ordinary skill in the art at the time of the invention would have added this feature

- With the motivation to provide a method of supporting the provision of a wide variety of regulated-type services and products via local and /or global communications network, in a way that complies with each jurisdiction's legal requirements (Jinnett, Field of Invention).
- The prior art differs from the claim by the substitution of some components. The substituted components were known. The technical ability existed to substitute the components as claimed and the result of the substitution is predictable.

43. ***Claims 28 and 29*** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al., U.S. Patent Number 6,542,905 in view of Thompson et al., U.S. Pre-Grant Publication 2002/ 0103834.

44. As per claim 28, Fogel teaches the method of claim 1 as described above.

Fogel does not explicitly teach the method additionally comprising the step of enhancing the gathered data.

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However, Thompson further teaches the method additionally comprising the step of enhancing the gathered data (figure 3, spell check and correcting and paragraphs 471 – 480).

It would have been obvious to one of ordinary skill in the art at the time of the invention to add this feature to Fogel. One of ordinary skill in the art at the time of the invention would have added this feature

- With the motivation to provide a computer-aided error correction application (Thompson, paragraph 14).
- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.

45. As per claim 29, Fogel in view of Thompson teaches the method of claim 28 as described above.

Fogel does not explicitly teach the method wherein enhancing the data comprises scrubbing the data to incorporate changes in the spelling of words comprising the gathered data as compared to the data descriptive of details of a long term care transaction.

However, Thompson further teaches the method wherein enhancing the data comprises scrubbing the data to incorporate changes in the spelling of words comprising the gathered data as compared to the data descriptive of details of a long term care transaction (figure 3, spell check and correcting and paragraphs 471 – 480).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to add this feature to Fogel. One of ordinary skill in the art at the time of the invention would have added this feature

- With the motivation to provide a computer-aided error correction application (Thompson, paragraph 14).
- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.

46. **Claim 31** is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al., U.S. Patent Number 6,542,905 in view of Guyan et al., U.S. Pre-Grant Publication 2003/ 0145124.

47. As per claim 31, Fogel teaches the method of claim 1 as described above.

Fogel does not explicitly teach further teaches the method wherein structuring the gathered data and the data relating details of the long term care transaction according to risk quotient criteria comprises processes based upon Boolean logic.

However, Guyan further teaches the method wherein structuring the gathered data and the data relating details of the long term care transaction according to risk quotient criteria comprises processes based upon Boolean logic (paragraphs 176, 177 with example; paragraphs 189 - 192 with example; paragraphs 227 - 230 with example).

It would have been obvious to one of ordinary skill in the art at the time of the invention to add this feature to Fogel. One of ordinary skill in the art at the time of the invention would have added this feature

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- With the motivation to store, retrieve and manipulate data using a plurality of functions (Guyan, Abstract).
- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEAL R. SEREBOFF whose telephone number is (571)270-1373. The examiner can normally be reached on Mon thru Thur from 7:30am to 5pm, with 1st Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/N. R. S./

Examiner, Art Unit 3626

1/21/2009

/C Luke Gilligan/

Supervisory Patent Examiner, Art Unit 3626